

SECOND SUBSTITUTE ORDINANCE NO. BL2019-1633

An ordinance amending Chapters 17.08 and 17.16 of the Metropolitan Code of Laws regarding "Short term rental property – Owner-Occupied" and "Short term rental property – Not Owner-Occupied" (Proposal No. 2019Z-011TX-001).

WHEREAS, short-term rental of homes can provide a flexible housing stock that allows travelers a safe accommodation while contributing to the local economy; and

WHEREAS, short-term rental of homes can provide homeowners an opportunity to hold property in difficult economic circumstances or as an investment; and

WHEREAS, hotel taxes from short term rental of homes can be used to promote travel and tourism, to support the local tourism industry, and to support the Barnes Fund for Affordable Housing; and

~~WHEREAS, the needs of long-term residents should be balanced with the allowance of short-term rentals.~~

WHEREAS, in 2018, the Tennessee General Assembly adopted the Short Term Rental Unit Act, now codified at Tenn. Code Ann. §13-7-601, et seq., which created inconsistencies with existing short term rental property regulations under the Metropolitan Code of Laws, necessitating revisions included below.

NOW, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That section 17.08.030 (District land use tables) of the Metropolitan Code of Laws is hereby amended by providing, under Commercial Uses, "Short term rental property (STRP) – Not Owner-Occupied" as a use permitted with conditions (PC) in MUN and MUN-A, MUL and MUL-A, MUG and MUG-A, MUI and MUI-A, OG, OR20 through OR40-A, ORI and ORI-A, CN and CN-A, CL and CL-A, CS and CS-A, CA, CF, DTC North, DTC South, DTC-West, DTC Central, SCN, SCC and SCR.

Section 2. That Section 17.16.070 of the Metropolitan Code is hereby amended by deleting Subsection U.2.b.iv in its entirety and substituting therefore the following:

iv. A statement that the applicant has confirmed that operating the proposed STRP would not violate any home owners association agreement or bylaws, condominium agreement, co-op agreement, lease agreement, covenants, easements, codes and restrictions or any other agreement governing and limiting the use of the proposed STRP property.

v. Proof of payment of all taxes due, including property taxes and, for permit renewals, all applicable room, occupancy, and sales taxes required by state law or the Metropolitan Code.

~~Section 3. That Section 17.16.070 of the Metropolitan Code is hereby amended by adding Subsection U.2.c. as follows:~~

~~c. RM-zoned properties will be eligible to apply for and receive STRP permits even after the effective date of this legislation if they meet all other requirements in Section U and they meet each of the milestones below:~~

- ~~i. File an affidavit of intent to apply for an STRP permit and apply for a building permit in conjunction with the intended STRP use by January 1, 2020;~~
- ~~ii. Obtain and pay for such building permit by July 1, 2020;~~
- ~~iii. Obtain and pay for the Use and Occupancy permit/letter by January 1, 2022;~~

- ~~iv. Apply for the STRP permits in conjunction with that building permit within 30 calendar days of the issuance date of the Use and Occupancy permit/letter; and~~
- ~~v. Obtain and pay for the STRP permits applied for in conjunction with that associated building permit.~~

Section 43. That section 17.16.070.U.4.i.iv of the Metropolitan Code be deleted and replaced with the following:

"iv. For an STRP with documented complaints to Metro Codes, police, or public works during the most recent permit period, no grace period shall be allowed and all permit renewal applications shall be submitted timely. The renewal application shall be submitted with a statement verified by affidavit that includes all of the information required in an application under Section 17.16.250.E.2."

Section 54. That Section 17.16.070 of the Metropolitan Code is hereby further amended by deleting Subsection U.4.I.i and U.4.I.ii in their entirety and substituting therefore the following:

I. Denial or Revocation of Permit.

- i. Upon the filing of a complaint regarding a STRP permit, the department of codes administration shall notify the permit holder in writing or by e-mail of such complaint. All complainants shall be notified that any false complaint made against a short-term rental unit provider are punishable as perjury under Tenn. Code Ann. §39-16-702.
- ii. If the zoning administrator determines, based on reasonably reliable information that the zoning administrator has obtained including without limitation public records or reports, records of regularly conducted activity, or a direct or online statement against a person's own interest, that three (3) violations of generally applicable provisions of the Metropolitan Code of Laws have occurred as a direct result of the operation of the short-term rental unit, the permit to operate a STRP may be revoked if no appeal rights remain.

Section 65. That Section 17.16.070 of the Metropolitan Code is hereby further amended by deleting Subsection U.4.I.vi(2) in its entirety and substituting therefore the following:

(2) Upon a finding by the board of zoning appeals that a short term rental property has operated without a permit, there shall be a waiting period of up to one year from the date of such finding for the property to become eligible for a STRP permit, as determined by the BZA. The length of the waiting period shall be based upon whether the operator was aware or unaware of the requirement that the STRP have a permit. Evidence to be evaluated in making this decision may include but is not limited to:

- (a) the testimony of the STRP operator;
- (b) the testimony of neighbors or others with knowledge of the STRP operation;
- (c) evidence that the operator was informed of the requirement and disregarded this information;
- (d) evidence that the operator had looked into requirements and misunderstood them;
- (e) prior or repeat offenses by the operator under this section; and
- (f) whether the operator, upon being informed of the requirement, obtained or attempted to obtain a permit before renting the STRP again.

Section 6. That Section 17.16.250 of the Metropolitan Code is hereby amended by adding the following as subsection E.1.g thereto:

g. Notwithstanding any provision herein to the contrary, any residential dwelling created by or contained within a horizontal property regime pursuant to Tenn. Code Ann. § 66-27-101, et seq. shall not be limited or otherwise restricted by subsections (e) or (f) of this section if a permit was issued on or before July 1, 2019.

Section 7. That Section 17.16.250 of the Metropolitan Code is hereby amended by deleting subsection E.2.b.v in its entirety and substituting in lieu thereof the following:

v. A statement that the applicant has confirmed that operating the proposed STRP would not violate any home owners association agreement or bylaws, condominium agreement, co-op agreement, lease agreement, covenants, easements, codes and restrictions or any other agreement governing and limiting the use of the proposed STRP property.

Section 8. That Section 17.16.250 of the Metropolitan Code is hereby further amended by deleting subsections E.4.i.ii in its entirety and substituting in lieu thereof the following:

ii. For STRP units that have received no documented complaints to metro codes, police, or public works during the most recent permit period, a renewal application may be submitted by mail, online, or in person according to regulations promulgated by the metro codes department. All such renewal applications shall include:

- (1) The payment of a renewal fee set by the zoning administrator; and
- (2) A statement verified by affidavit that:
 - (a) Includes all of the information required in an application under Section 17.16.250.E.2; and
 - (b) The STRP continues to be in full compliance with all applicable laws, including the payment of all applicable taxes.

Section 9. That Section 17.16.250 of the Metropolitan Code is hereby further amended by deleting subsections E.4.l.i and E.4.l.ii in their entirety and substituting in lieu thereof the following:

I. Denial or Revocation of Permit.

i. Upon the filing of a complaint regarding a STRP permit, the department of codes administration shall notify the permit holder in writing or by e-mail of such complaint. All complainants shall be notified that any false complaint made against a short-term rental unit provider are punishable as perjury under Tenn. Code Ann. §39-16-702.

ii. If the zoning administrator determines, based on reasonably reliable information that the zoning administrator has obtained including without limitation public records or reports, records of regularly conducted activity, or a direct or online statement against a person's own interest, that three (3) violations of generally applicable provisions of the Metropolitan Code of Laws have occurred as a direct result of the operation of the short-term rental unit, the permit to operate a STRP may be revoked if no appeal rights remain.

Section 10. That Section 17.16.250 of the Metropolitan Code is hereby further amended by deleting subsections E.4.l.vi.(2) in its entirety and substituting in lieu thereof the following:

(2) Upon a finding by the board of zoning appeals that a short term rental property has operated without a permit, there shall be a waiting period of up to one year from the date of such finding for the property to become eligible for a STRP permit, as determined by the BZA. The length of the waiting period shall be based upon whether the operator was aware or unaware of the requirement that the STRP have a permit. Evidence to be evaluated in making this decision may include but is not limited to:

- (a) The testimony of the STRP operator;
- (b) The testimony of neighbors or others with knowledge of the STRP operation;
- (c) Evidence that the operator was informed of the requirement and disregarded this information;
- (d) Evidence that the operator had looked into requirements and misunderstood them;
- (e) Prior or repeat offenses by the operator under this section; and
- (f) Whether the operator, upon being informed of the requirement, obtained or attempted to obtain a permit before renting the STRP again.

Section 11. Notwithstanding the foregoing, the Accessory Use restrictions and Commercial Use restrictions under Section 17.08.030 of the Metropolitan Code (District land use tables), as amended herein, shall not apply to property used as a short-term rental property by the owner of the property prior to the enactment of Ordinance no. BL2017-608 or BL2019-1633, depending upon the zoning district. Such exemption shall apply until such property is sold, transferred, ceases being used as a short-term rental unit for a period of thirty (30) continuous months, or has been in violation of generally applicable provisions of the Metropolitan Code of Laws three (3) or more separate times with no remaining right of appeal.

Section 12. That section 17.16.250.E.4.i.ii(1) of the Metropolitan Code be deleted and replaced with the following:

- (1) The payment of a renewal fee set by the zoning administrator; and

Section 13. That section 17.16.250.E.4.i.iv of the Metropolitan Code be deleted and replaced with the following:

"iv. For an STRP with documented complaints to metro codes, police, or public works during the most recent permit period, no grace period shall be allowed and all permit renewal applications shall be submitted timely. The renewal application shall be submitted with a statement verified by affidavit that includes all of the information required in an application under Section 17.16.250.E.2."

~~Section 14. That Section 17.16.070 of the Metropolitan Code is hereby further amended by deleting Subsection U.4.k in its entirety and substituting the following:~~

~~k. A STRP permit shall not be transferred or assigned to another individual, person, entity, or address, nor shall the permit authorize any person, other than the person named therein, to operate a STRP on the property. Provided however that upon the purchase or acquisition of property zoned RM for which a STRP permit was previously issued on or before May 31, 2020, the new owner may apply for and be issued a STRP permit only if the previously issued permit was in good standing at the time of purchase or acquisition.~~

~~Section 15. That Section 17.16.070 of the Metropolitan Code is hereby further amended by deleting Subsection U.4.l.v in its entirety and substituting therefore the following:~~

~~v. Once a STRP permit has been revoked, no new permit shall be issued to the applicant for the same property for a period of one year from the date of the revocation. For STRP permits in RM districts, once a permit is revoked, it shall not be eligible for reapplication by the current or any subsequent owner.~~

Section 1614. The Metropolitan Clerk is directed to send a copy of this Ordinance to the Zoning Administrator for the Metropolitan Department of Codes Administration.

Section ~~17~~¹⁵. The provisions of Sections 1 through 6 of this Ordinance shall become effective ~~May 31, 2020~~
January 1, 2022. The remaining Sections of this Ordinance shall take effect from and after its final passage,
and such change shall be published in a newspaper of general circulation, the welfare of The Metropolitan
Government of Nashville and Davidson County requiring it.

~~Section 18. This Ordinance shall take effect from and after its final passage, and such change shall be
published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville
and Davidson County requiring it.~~

INTRODUCED BY:

Angie Henderson

Larry Hagar

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Members of Council